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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 83-2037

CITY OF LAMBERTVILLE
Appellant

v.

LAMBERTVILLE POLICEMEN'S ASSOCIATION
Appellant

ON APPEAL FROM THE NEW JERSEY SUPERIOR COURT (APPELLATE DIVISION)

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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Date 18 August 1984

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STATEMENT OF THE CASE

Appellant affirms the above as set forth in the Jurisdictional Statement and incorporates it as part of this.

ARGUMENT

I THE PUBLIC EMPLOYMENT RELATIONS COMMISSION OF NEW JERSEY HAS NO STANDING TO MAINTAIN A MOTION TO DISMISS OR AFFIRM IN THIS CASE

On the question of standing it states in Flast v. Cohen, 392 U.S. 83, 20 L Ed 2d 947, 88 S Ct 1942 (1968) at 99:

> " The "gist of the question of standing" is whether the party seeking relief has " alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." .....
> In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable."

and at note #20, 20 L Ed 961 it states:

" Thus, a general standing limitation imposed by federal courts is that a litigant will ordinarily not be permitted to assert the rights of absent third parties. See, e.g. Heald v.District of Columbia, 259 U.S.114, 123, 66 L Ed 852, 854, 42 S Ct 484 (1922)..... "

(underlines added)

Appellant respectfully submits that the Public Employment Relations Commission, hereinafter the Commission, has no standing to maintain such a motion. It is not listed in the caption of the case as a party nor has it moved to intervene. It has submitted its motion to dismiss or affirm as a stranger without explaining how it could possibly have a personal stake in the outcome of the controversy or be aggrieved by reason of the decision, particularly, since it is the one which made it. It is elemental to our

judicial system that one cannot be the judge and also a party in the same case. It is possible that an administrative agency might have a legitimate interest in behalf of the public, as it sees it, in maintaining its decision before a higher tribunal because of its quasi-judicial nature. (75 Harv. L Rev.296, 1961) However, in the instant case it is not defending its own order against a reversal. The higher courts affirmed its ruling. Nor can one move in a case before becoming a party. In In re Old Colony Coal Co., 49 N.J. Super.117, 129 (App. Div. 1958) the court suppressed the brief of an individual who sought to enter the appeal "...without even the suggestion of a motion for leave to intervene. This he may not do."

The Commission seems to rely on its

being in the case because of a successful cross motion in the Appellate Division of the Superior Court, based on a combination New Jersey Court Rule 2:8-3(b)and N.J.S.A. 34:13A-5.4(f) (PERC brief 8) But a close examination of the rule and statute (PERC brief 24,25) discloses that such reliance is misplaced, and its entrance into the case. erroneous. The rule calls for a "party" to make such motion and the Commission obviously cannot qualify because it just made the ruling under appeal, which has not been ruled upon. The statute permits it to enter before the Appellate Division but only for the purpose of enforcing its order, not to litigate as a party. The wording of the rule and the statute is clear on these points. And under the circumstances, appellant will not take issue

with the procedural objections raised by the Commission but will rely on the prior Statement.

CONCLUSION

It is respectfully requested, for the above reasons, that the Court deny the Motion to Dismiss or Affirm and note probable jurisdiction for the instant appeal.

Respectfully submitted

Joseph F. Shanahan, Esq.
Attorney for Appellant

Dated 18 August 1984

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of August 1984 three copies of the appellant's brief in opposition to motion to dismiss or affirm were mailed, with postage prepaid, to Ptl. Dennis Kendig, representative of Lambertville Policemen's Association 57 Elm Street Lambertville, N.J. 08530, to Irwin I. Kimmelman, Attorney General Richard J. Hughes Justice Complex Trenton, N.J. 08625 and to Don Horowitz, Esq. PERC 429 East State Street Trenton, N.J. 08608.

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